

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

MICHAEL MILLER, :
Plaintiff : **No. 1:24-CV-00014**
: :
v. : **Magistrate Judge Schwab**
: :
COUNTY OF LANCASTER and : **Electronically Filed Document**
OFFICE OF OPEN RECORDS, :
Defendants : *Complaint Filed 01/04/24*

DEFENDANT'S MOTION TO SET ASIDE DEFAULT

Defendant the Pennsylvania Office of Open Records (Defendant), through counsel, hereby files this Motion to Set Aside Default pursuant to Rule 55(c) of the Federal Rules of Civil Procedure and respectfully moves this Court to set aside the default entered by the Clerk on February 5, 2024. (Doc. 12.) Defendant avers as follows:

1. Plaintiff's *pro se* Complaint was docketed in this matter on January 4, 2024. (Doc. 1.)
2. On January 11, 2024, Defendant was served with a copy of the Complaint. (Doc. 6.)
3. Rule 12(a)(1)(A)(i) of the Federal Rules of Civil Procedure provides that when served with process, the defendant has twenty-one (21) days to respond to the complaint. *See* Fed. R. Civ. P. 12(a)(1)(A)(i).

4. Defendant's response to the Complaint was, therefore, due on or before February 1, 2024. *See gen. id.; see also* Doc. 6.

5. Undersigned Counsel received referral to represent the Defendant on February 1, 2024, and filed her entry of appearance and motion for extension of time to respond to the complaint that same day. (*See* Docs. 9, 10.)

6. Pursuant to rule 6(b)(1)(A) of the Federal Rules of Civil Procedure, a court may extend the time for a response, as is relevant to this matter, via motion before time expires. *See* Fed. R. Civ. P. 6(b)(1)(A).

7. Defendant's Motion for Extension of Time sought leave to extend its time to file its responsive pleading before the time for it to respond to the Complaint expired because its Motion was filed on February 1, 2024. *See* Docs. 9, 10; *see also* Fed. R. Civ. P. 6(b)(1)(A).

8. These filings, the entry of appearance and motion for extension of time, illustrate Defendant intends to defend against this action on the merits, and promptly acted in good faith to do so by the requisite filing deadline.

9. The Court has not yet ruled on Defendant's Motion for Extension of Time.

10. Plaintiff requested that default be entered against Defendant on February 5, 2024. (Doc. 11.)

11. The Clerk entered default against Defendant on February 5, 2024. (Doc. 12.)

12. Plaintiff then filed his Notice of Intent to Apply for Default judgment on February 6, 2024. (Doc. 13.)

13. Rule 55(c) provides “[t]he Court may set aside an entry of default for good cause . . .” Fed. R. Civ. P. 55(c).

14. In determining whether to grant a Motion to Set Aside Default filed under Rule 55(c), the Third Circuit has directed district courts to consider: (1) whether the plaintiff will be prejudiced; (2) whether the defendant has presented a meritorious defense; and, (3) whether the default was the result of the defendant’s culpable conduct. *Chamberlain v. Giampapa*, 210 F.3d 154, 164 (3d Cir. 2000) (citing *United States v. \$55,518.05 in U.S. Currency*, 728 F.2d 192, 194-95 (3d Cir. 1984)).

15. Defendant submits that Plaintiff will not be prejudiced by the setting aside of the default, that it has a meritorious defense as the Complaint fails to state any claim upon which relief may be granted, and it has timely participated in this litigation such that no culpable conduct can be attributed to it.

WHEREFORE, Defendant requests that this Court grant its Motion and set aside the default entered by the Clerk.

Respectfully submitted,

MICHELLE A. HENRY
Attorney General

By: *s/ Mary Katherine Yarish*
MARY KATHERINE YARISH
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Date: February 9, 2024

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**CERTIFICATE OF CONCURRENCE / NON-
CONCURRENCE**

I, Mary Katherine Yarish, Deputy Attorney General for the Commonwealth of Pennsylvania, Office of Attorney General, hereby certify that Plaintiff was contacted for his concurrence position via electronic email, and, at the time of the filing of this Motion, Undersigned Counsel did not receive his position on concurrence.

s/ Mary Katherine Yarish
MARY KATHERINE YARISH
Deputy Attorney General

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CERTIFICATE OF SERVICE

I, Mary Katherine Yarish, Deputy Attorney General for the Commonwealth of Pennsylvania, Office of Attorney General, hereby certify that on February 9, 2024, I caused to be served a true and correct copy of the foregoing document titled *Defendant's Motion to Set Aside Default* to the following:

VIA ECF

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s/ Mary Katherine Yarish
MARY KATHERINE YARISH
Deputy Attorney General